IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 166 OF 2002.

ORDER PASSED ON OFFICIAL LIQUIDATOR'S REPORT

IN THE MATTER OF M/S.
MODISTONE LTD. (IN LIQN.)

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Mr. K.J.Gandhi i/b Mulla & Mulla &Craigie Blunt & Caroe for the Bombay Port Trust.

Mr. R.M. Jaykar i/b M/s. M. V. Jaykar & Co., for intrested auction purchaser.

Mr. C.N.Mehta, Advocate for Chandak Associates.

Coram: V.M.KANADE, J.
Date: 26th August, 2004.

P.C.

1. Learned Counsel appearing on behalf of the Bombay Port Trust has taken objection to the order passed by this court on 24th June 2004. It is submitted that the matters of M/s. Mulla & Mulla & Craigie Blunt & Caroe were not to be placed before the Justice J.N.Patel, pursuant to the directions given by this court. Secondly, the name of the solicitors were not shown on the daily board and the Official Liquidator's report was allowed in terms of prayer clauses (a) (b) & (c). Learned counsel therefore seeks recall of the said order

and submits that he may be heard before any further order is passed by this court.

2. The main objection of the Bombay Port Trust is to the sale of the structures which were erected by the company on the land which was leased to them as also a sale of the godowns on the land which was initially leased by the bombay Port Trust to one other person - K. S. Khushalini who in turn had illegally sub-let the godown to the company. It is, therefore, submitted that pursuant to the lease-deed executed between the Bombay Port Trust and the Modistone Company dated 20th March 1945 the land and the structure which was to be erected thereon, was to be exclusively owned by the Bombay Port Trust. It was therefore submitted that without hearing all the objections raised by the Bombay Port Trust, the said structures and land should not be auctioned.

3. The Official Liquidator has submitted that, in fact, the terms and conditions of sale which are annexed to the Official Liquidator's report clearly indicate that the following assets were to be sold on "as is where is basis".

Lot No.1. Movable assets, i.e. Plant & Machinery, Structures/sheds furniture and fixtures and

other movable assets lying at factory premises situated at Hey Bunder Road, Mumbai 400 033.

Lot No.2. Vehicles lying at factory Premises situated at Hey Bunder Road, Mumbai 400 033.

Lot No.3. Movable assets lying at Godown No.3& 4 situated at Fosbexy Road, Severe, Mumbai - 15.

4. It is submitted by the Official Liquidator that the structures/sheds, furniture, fixtures and other movable assets lying in the factory premises are being sold in auction and that the main structure or building is not to be put in auction at this stage. It is further submitted that if the valuer who has submitted the report in a sealed cover has included the main structure of the building along with other assets, the said structure would be excluded and accordingly further steps would be taken. In view of the said statement made by the official Liquidator, I do not see any reason as to why the earlier order passed on 24th June 2004 should not be confirmed. The order is, therefore, confirmed. It is, however, clarified that it will be open for the Bombay Port Trust to file a separate application seeking further clarification in respect of the land and structure which is erected. If such an application is preferred, copies thereof to be served on the Official Liquidator and other

contesting claimants well in advance. As and when such an application is preferred by the Bombay Port Trust, the same should be considered separately.

5. In view of this, 199 tenders which have been received by the Official Liquidator should be opened in the presence of Company Registrar, High Court Bombay (Mr.A.P.Kothari) in the office of the Official Liquidator and a chart to be prepared which should be submitted to this court on 3rd September 2004.

6. Mr. Jaykar appearing on behalf of one of the interested auction purchasers submits that he has recently learnt about the said auction and his client would like to submit the bid. Permission is granted subject to the condition that the said offer is made in a sealed cover on or before 30th August 2004. The Official Liquidator to consider the said tender. If any other person wants to make bid, the same can be made on or before 30th August 2004. It is also clarified that whoever wishes to take inspection of the property can do so on depositing the cost which are quantified at Rs.2,000/-.

(V.M.KANADE,J.)

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